SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. ~~979~~ 67

SUSIE WILLIAMS ET AL.,

Petitioners,

vs.

ALLEN TOOKE ET AL.

BRIEF AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

May It Please the Court:

The case is stated in the petition, and it is unnecessary to repeat same here. If we shall, before coming to the main part of the brief, point out the cardinal error in the decision below, and briefly discuss the allegations in the bill, which, we contend, conferred both Federal and equity jurisdiction on the Trial Court, and which, it is obvious, we say, the Circuit Court of Appeals misapprehended, misconceived and overlooked, it will make for a better understanding of the case and be of aid to the court in the ultimate decision of the question of whether the writ should issue.

The decision below, *Williams* v. *Tooke*, 108 F. (2d) 758.

The substance of the decision of the Circuit Court of Appeals is summed up in the following excerpt from the opinion:

> "If all the judgments complained of were merely erroneous that would not amount to a denial of due process of law. American Railway Express Co. *v.* Kentucky, 273 U. S. 269. However, if a case between private parties is arbitrarily and capriciously decided, in violation of settled principles of law and contrary to undisputed facts, though the court so deciding had jurisdiction over the suit, the judgment may be in violation of the 14th Amendment. Postal Telegraph Cable Co. *v.* Newport, Ky., 247 U. S. 464. But that does not help appellant in this case. We are dealing solely with the jurisdiction of the District Court. The purpose of the suit is clearly to seek a review of the decisions of the Texas courts and the reversal of those decisions for error. The jurisdiction of the District Court is strictly original. It has no jurisdiction to reverse or modify the judgment of a State court. The errors complained of could be reviewed only by the Supreme Court. Rooker *v.* Fidelity Trust Co., 263 U. S. 413. It was the duty of the District Court to dismiss the suit,"

which, we say, clearly shows that the court misconceived the purpose of the suit, and that its judgment is based solely upon such misconception.

Remembering that this case is here presented on an appeal from an order dismissing the bill, and therefore all of the allegations contained in the bill must be taken as absolutely true, let us look at the pertinent portions thereof, and determine whether the bill sought to reverse or modify the State court judgment, or, as we contend, *to engraft a trust thereon.* If such investigation discloses that the bill sought the reversal of the judgments assailed, then the judgment and decision of the Circuit Court of Appeals is

correct; but, if we are right in our contention that the bill seeks to engraft a trust thereon, then the decision of the Circuit Court of Appeals is wrong.

The amended bill and its amendments shows or tends to show:

(1) That on November 4, 1933, petitioners filed suit in the District Court of Gregg County, Texas (No. 8828-a), against respondents to redeem a tract of land from an unforeclosed vendor's lien, and offered to do equity, and a "take nothing" judgment was entered against petitioners and they appealed to the Court of Civil Appeals and filed the record therein, and their assignments of error (R. 25).

(2) Then it is alleged that said appellees (respondents here) "well knew that due process of law required that each of plaintiffs said assignments of error be sustained and that the judgment below be reversed and judgment rendered for appellants, and that said appellees entered into some sort of a secret agreement with the respective justices of said Court of Civil Appeals wherein it was agreed that if said Court of Civil Appeals would ignore plaintiffs' assignments of error and the law in respect thereto, and affirm said judgment below, which, as hereinafter shown, it did, they would procure the Supreme Court of Texas to refuse a writ of error therein, which, as hereinafter shown, it did" (R. 85).

(3) Then it is alleged that said Court of Civil Appeals affirmed said judgment in cause No. 8828-a, and a copy of its opinion is attached to the bill as Exhibit "B" (R. 133).

(4) Then it is alleged that each of the holdings of said Court of Civil Appeals is contrary to indisputable facts and a mere sham and done under said conspiracy and with the intent to defraud said appellants (petitioners here) and each of such holdings is in conflict with those settled principles which have been established in our system of jurisprudence for the protection

and enforcement of private rights, and their conduct was peculiar to said litigation and contrary to that accorded others similarly situated, and that in so doing they acted as the alter egos of said appellees (R. 95-117).

(5) Then it is alleged that thus the said Court of Civil Appeals carried out its said agreement with respondents, and affirmed said judgment irrespective of fact and law (R. 85-90, 95-110).

(6) Then it is alleged that these petitioners had the right to and did file a petition for rehearing in said Court of Civil Appeals, which petition it denied (R. 92).

(7) Then it is alleged:

"That the Supreme Court of Texas has appellate jurisdiction extending to all questions of law arising in certain cases which have been brought to the Court of Civil Appeals from final judgments of the Trial Courts, to-wit: (1) Those in which the judges of the Courts of Civil Appeals may disagree on any question of law material to the decisions; (2) those in which one of the Courts of Civil Appeals holds differently from a prior decision of its own, or another Court of Civil Appeals, or of the Supreme Court, upon any question of law; (3) those involving the construction or validity of statutes necessary to a determination of the case; (4) those involving the revenue of the State; (5) those in which the Railroad Commission is a party; (6) and in any other case in which it is made to appear that an error of substantive law has been committed by the Court of Civil Appeals which affects the judgment, including those cases in which the judgment of the Court of Civil Appeals is made final by statute. And the statute further provides that in all cases where the judgment of the Court of Civil Appeals, in the opinion of the Supreme Court, is a correct one, and where the principles of law declared in the opinion of the Court are correctly determined, the Supreme Court shall

refuse the application for writ of error (Art. 1728, Vernon's Ann. C. S. of Texas, 1925, as amended)" (R. 92-93).

(8) Then it is alleged:

"That under the Constitution and laws of the State of Texas the Supreme Court of Texas consists of a Chief Justice and two Associate Justices, and under the law any two of whom shall constitute a quorum, and that the concurrence of two Judges shall be necessary to the decision of a case" (R. 167).

(9) Then it is alleged:

"That within 30 days after the Court of Civil Appeals had overruled said Motion for rehearing of appellants, these plaintiffs, as plaintiffs in error, filed in said Court of Civil Appeals their application to the Supreme Court of Texas for writ of error in said cause, and that in due course said application with the record of said cause and said opinion of the Court of Civil Appeals was filed in the Supreme Court of Texas, and said application was docketed in said Supreme Court as application No. 23468, styled Susie Williams, et al., plaintiffs in error, vs. Allen Tooke, et al., defendants in error; that said application was in the form required by Statute and the rules of the Supreme Court of Texas, and set forth the grounds of jurisdiction of the Supreme Court and assignments of error and propositions of law thereunder, and that said Court of Civil Appeals had committed an error of substantive law in each of its said holdings, as hereinafter set forth; that in due season and in response thereto said defendants in error filed in the Supreme Court their Reply to said application for writ of error in which they made the same pretenses and contentions as set forth in their said counterpropositions in the Court of Civil Appeals; that during all of said time that said application for writ of error was pending in the Supreme Court there was no quorum of the Judges of said Court present or acting; that during all of said time the Chief

Justice of said Court was absent from the State of Texas; that during all said time Judge Sharp, one of the Associate Justices of said Court was ill and did not act in said case; that during all of said time no member of said Court was present and acting except Honorable Richard Critz, one of the Associate Justices thereof; that notwithstanding that there was not a quorum of said Judges present at any time while said application for writ of error was pending, yet, Judge Critz, acting solely and not with the concurrence of any other Judge of said Court, caused to be and there was entered upon the docket of said Court an order dismissing said application for writ of error for want of jurisdiction; that these plaintiffs being ignorant of the facts aforesaid, filed in said Supreme Court within 15 days after such order dismissing said application, their motion for a rehearing of their application; that during the time said motion for rehearing was pending in said Court there was not a quorum of the Judges thereof present; that Judge Critz acting solely and without the concurrence of any other Judge, entered an order overruling these plaintiffs' said motion for rehearing; that in each of said acts said Judge Critz made it appear from the record that said acts were done by the Supreme Court of Texas, thereby making it appear from the record that at least two of said Judges had concurred in said orders" (R. 167-168, 169).

(10) Then it is alleged:

"In this connection plaintiffs aver that neither the alleged order of the Supreme Court dismissing plaintiffs' application for writ of error for want of jurisdiction or their motion for rehearing thereof was the act of the Supreme Court of Texas, but that said order and each of them were simply the arbitrary edict of Judge Critz, which he clothed in form of a judicial sentence, with the intent to make it appear that such was the act of the Court; that said Judge Critz, well knowing all the facts caused said orders and each of them to be entered with the intent to deprive these com-

plainants of their property without due process of law and to deliberately deny to them the equal protection of the laws in violation of the Federal Constitution" (R. 169).

(11) Then it is alleged;

"In this connection plaintiffs further aver that the alleged orders of the Supreme Court of Texas, i. e., dismissing their application for a writ of error, and overruling their motion for a rehearing therein, were so plainly arbitrary and contrary to the settled rules of law as to be acts of mere spoliation, and impossible in a rational administration of justice, and as a result plaintiffs' property was given to defendants without consideration" (R. 170).

(12) Then it is alleged;

"That if said District Court had tried said cause No. 8828a, according to the settled principles of our system of jurisprudence, it would have rendered judgment for said plaintiffs, and interveners and that if said Court of Civil Appeals had considered and applied the settled rules of law to the errors assigned, it would have not affirmed said judgment but would have reversed the same and rendered judgment for said appellants, and that if the Supreme Court of Texas, had considered these plaintiffs application for a writ of error, and applied the settled rules of law thereto, it would have taken jurisdiction and reversed the judgments below and rendered judgment for plaintiffs in error" (R. 117).

(13) Then it is alleged;

"That thus, the State of Texas, acting by its said judicial departments, in effect took plaintiffs' said property and gave it to the defendants without consideration, and thereby violated the 14th Amendment of the Constitution of the United States as heretofore shown." (R. 117).

(14) Then it is alleged;

> "That plaintiffs do not contend that the State of Texas, so acting by its said judicial departments as aforesaid, committed errors of law in respect of the matters aforesaid, but charge that said Court of Civil Appeals and Supreme Court of Texas, in so doing, did not act judicially, but deliberately acted arbitrarily and capriciously, and deliberately and intentionally discriminated against them, and refused to award them relief which, under the settled laws of this State they were entitled to, and deliberately and intentionally ignored and refused to apply those fundamental principles which have been established in our system of jurisprudence for the enforcement and protection of private rights, and that their said conduct was peculiar to said litigation and contrary to that accorded to others similarly situated, and that they intentionally awarded plaintiffs property to said defendants without consideration and that by reason thereof, United States Constitution, 14th Amendment was violated, in that, plaintiffs were deprived of their property without due process of law and denied the equal protection of the laws" (R. 117, 118).

(15) Then it is alleged;

> "Plaintiffs further aver that said defendants having obtained the possession of plaintiffs property in the manner hereinbefore set forth, and are holding and claiming same in virtue of the aforesaid judgments, should be decreed to hold same as constructive trustees for the plaintiffs herein, and required to convey the same to plaintiffs or to a trustee for them, and account for the rents and profits of said land since March 4, 1919, less their proper offsets, and the plaintiffs now offer to do and perform such equities as this Honorable Court may order and decree" (R. 119).

The prayer is that said defendants be held as trustees and required to account (R. 119).

It is thus seen that it is alleged that the pretended judgment of the Supreme Court was not the act of said Court but was the sole act of one of the Judges thereof, and that said State Court judgment was concocted in fraud, and

So, we submit, it is too plain for argument that the bill does not seek the reversal of the State Court judgment as held by the Circuit Court of Appeals, but seeks merely, to engraft a trust thereon, and require defendants to do equity, and with this familiarity of the case and the way it was decided below, we are brought to a consideration of the decisions of this Court, and to show, if we can, that each of the reasons assigned in the petition for the writ is sound.

DISCUSSION OF AUTHORITIES.

Preliminary Statement.

It is thus shown that the purpose of the bill is to engraft a trust on the State Court judgment and compel respondents to do what they ought to do according to the principles of equity, and Federal jurisdiction is asserted on the ground that the petitioners were denied a constitutional right, in violation of the guarantees of the Fourteenth Amendment to the Constitution of the United States.

This Court will please bear in mind that said Circuit Court of Appeals, in effect, held that the lower court had *Federal* jurisdiction in this case, but that *it did not have equity* jurisdiction. That is it could not engraft a trust on a State Court judgment *without setting the judgment aside.* This is evident from the opinion itself, and is emphasized by the opinion of said court in the companion case of *Hendron* v. *Yount-Lee Oil Company*, 108 F. (2d) 759, where Federal jurisdiction was asserted on the ground of diversity of citizenship and amount involved and the relief sought was to engraft a trust on a State Court judgment

alleged to be tainted with the fraud of the State Court Judges, and the defense interposed therein was that the matter was *res adjudicata* and relief could not be given without setting aside the judgment of the State Court and the District Court had no power to set aside a State Court judgment, and said Circuit Court of Appeals, in affirming the judgment below dismissing the bill, said:

> "It is apparent the plea of *res adjudicata* is good unless the judgments of the District Court of Woods County, the Court of Appeals and the Supreme Court of Texas above referred to, are set aside as depriving plaintiffs of due process of law in violation of the 14th Amendment. In the case of Susie Williams et al. *v.* Allen Tooke et al. — F. (2d) —, decided this day, on allegations of unconstitutionality *substantially* the same as in the case at bar, we had occasion to consider the jurisdiction of a District Court of the United States to set aside a judgment of a state court. On authorities cited therein, we held the District Court was without jurisdiction for want of the presentation of a substantial federal question. On the authority of that case the judgment is affirmed,"

which shows, we say, that in the instant case the said Circuit Court of Appeals affirmed the judgment below *solely* on the ground that relief could not be awarded appellants *without setting aside the State court judgment even though it was tainted with fraud.*

As we suggested to said court in our argument and in our petition for rehearing, we here repeat that this case is ruled by the doctrine of *Arrowsmith* v. *Gleason,* 129 U. S. 86; not by *Rooker* v. *Fidelity Trust Company,* 263 U. S. 413, as held by said court.

The difference in the facts of the two cases differentiate the legal principles applicable to them.

MAIN QUESTION.

Federal Jurisdiction.

The main question is, whether the court below had *Federal* jurisdiction under the admitted averments of the bill? It being indubitably shown that petitioners had the right to and did appeal from the judgment of the State District Court, and such judgment did not become final until such appeal was disposed of in some legal manner; it being also shown that the Court of Civil Appeals affirmed the judgment of the district court and denied a petition for rehearing, and that such judgment of affirmance could not become final until the expiration of the statutory time for appeal to the State Supreme Court; it being also shown that petitioners had the right to and did appeal from said judgment of affirmance to the State Supreme Court by filing an application for writ of error, and that petitioners had the right under the law to have such application heard by the Supreme Court of Texas, and that said application *was not heard by such court* but the *pretended* order dismissing said application for writ of error and thereby apparently approving the judgment of the Court of Civil Appeals was the act of *one* of the judges of said court *without the concurrance* of any other judge, hence petitioners were denied a constitutional right, because, "*In the absence of a quorum of the number required by law to hold court, a judgment rendered by the remaining judges would be regarded as a nullity, because in such case there would be no authority in the court to render the judgment*", (*Long* v. *State*, 127 S. W. R. 558, Judge Davidson delivering opinion of Court of Criminal Appeals of Texas, citing cases from several jurisdictions).

Petitioners' contention should be considered as sustained by *Wagner Elec. Mfg. Co.* v. *Lyndon*, 262 U. S. 226; *Rooker*

v. *Fidelity Trust Co.*, 263 U. S. 413; *Owens* v. *Battenfield*, 33 F. (2d) 753 (8 C. C. A.), Cert. Den.; *Lake* v. *Central Savings Bank of Oakland*, 27 F. (2d) 747 (9 C. C. A.), Cert. Den.; *Willis* v. *Scott*, 40 F. (2d) 330 (10 C. C. A.), Cert. Den.

In *Wagner Mfg. Co.* v. *Lyndon*, 262 U. S. 226, where it was contended: second, that the action of Division No. 1 of the Missouri Supreme Court in hearing the case on appeal with three judges and allowing a fourth, who did not hear the oral argument, to take part in the decision and write the opinion, * * * deprived the Wagner Company of its property without due process of law and denied it the equal protection of the laws, and in affirming the judgment below in dismissing the bill, this Court says:

> "The second ground is equally unsubstantial. The machinery for the review of judgments of courts of the first instance is wholly within the control of the State Legislature—Missouri *v.* Lewis, 101 U. S. 22, 30—and when the review by four judges is given, and the opinion is rendered by three of them, *constituting the quorum*, the mere fact that the fourth judge did not hear the oral arguments, but wrote the opinion on the printed arguments is at most an irregularity which does not in the slightest degree affect the validity of the judgment." (Italics ours.)

In *Rooker* v. *Fidelity Trust Company, supra*, the Bill charges that the judgment of affirmance by the Supreme Court of the State is void because one of the judges participating therein had an interest in the case which caused his disqualification. The Supreme Court overruled this contention holding that the record shows that the judge had no disqualifying interest in the subject matter.

Another illustrative case is *Owens* v. *Battenfield*, 33 F. (2d) 753 (8 C. C. A.), Cert. Den., where petition for injunction was filed in Federal District Court to restrain the col-

lection of a money judgment rendered by State Supreme Court, upon the alleged ground that four of five State Supreme Court judges did not read the evidence in the record before joining in affirmance of the judgment sought to be enjoined, and in affirming the decree dismissing the bill, the court said:

> "The bill suggests and counsel argue that the State law requires the concurrance of five judges of the Supreme Court; that the failure of four of the five judges herein to read the record made it legally impossible to join in a judgment and, therefore, this judgment was not by five judges. *This is answered in the allegations of the bill* that the four judges did, as a matter of fact, concur." (Italics ours).

If our contention is not correct, then the courts in the decisions last above did a useless thing.

In each of said cases the question was whether the bill shows a deprivation of a constitutional right.

The very question involved in this case was involved in each of the above cases. Before said courts would have made such holding they must have decided that a judgment by less than a quorum was a deprivation of a constitutional right.

We most respectfully submit that the above cited cases are directly in point and support our conclusion that the court below had Federal jurisdiction of this case.

Now, we submit; the said court undoubtedly had Federal jurisdiction by reason of the existence of a Federal question, the next inquiry is did it have

Equity Jurisdiction.

"The jurisdiction of a court of chancery in cases of fraud is as broad and far-reaching as the forms, the devices and the ramifications of fraud can extend", (*Vanderbilt* v.

Mitchell, 72 N. J. Eq. 910, 917, 67 A. 97, 14 L. R. A. (N. S. 304).

It seems to be well settled that where a judgment is concocted in fraud, *such as the corruption of the court, equitable relief may be given.*

Bigelow on Fraud, Vol. I, p. 88, Note;
Bigelow on Estoppel, (5th Ed.) p. 307;
Little Rock etc. Ry. Co. v. *Wells*, 54 A. S. R. 230;
Sanford v. *Head*, 5 Calif. 297;
Newton v. *Stokes*, 30 Fed. 891, 892.

In the last case cited suit was filed in the State court by Mrs. Newton and judgment went against her, and afterwards she filed suit in the United States Circuit Court, seeking to set aside the State court judgment upon the ground that said State court judgment against her was obtained by perjury and the corruption and bribery of the judge.

The opinion in that case was written by Mr. Justice David J. Brewer, who was one of the justices of the Supreme Court of the United States for more than twenty-five years, while sitting as a circuit judge. He said:

> "The matter which, of course, first arrests the attention, is that of the alleged corruption and bribery of the judge of the superior court; for, if these grave charges were true, not only would the judge himself receive the just condemnation of every honest man, *but in every court the judgment which he had sought by his wrong to lift up as a barrier to truth and justice would be wholly* disregarded." (Italics ours.)

In such a case (said Judge Hoffman in *United States* v. *Flint*, U. S. Circ. Ct. Cal., Sept., 1876), the judgment is "*fabula, non judicum*".

This Court in *Graffam* v. *Burgess*, 117 U. S. 186; speaking on the subject, said:

> "It is insisted that the proceedings were all conducted according to law. Very likely. Some of the

most attrocious frauds are committed in that way. Indeed, the greater the fraud intended, the more particular the parties to it often are to proceed according to the strictest forms of law."

The equity jurisdiction conferred on the Federal courts is the same as that the High Court of Chancery in England possesses; and where a judgment is concocted in fraud, the proper District Court of the United States may, "*without controlling, supervising, or annulling the proceedings of State courts, give such relief as is consistent with the principles of equity*".

These principles have now become axioms of equity jurisprudence.

Thus, in *Arrowsmith* v. *Gleason*, 129 U. S. 86, where certain lands in Ohio, inherited by plaintiff, were sold by his guardian, under orders therefor regularly obtained by the guardian from the proper probate court, and the sales were held in due form and regularly confirmed by such court. The bill attacked the order of sale as invalid, prayed the guardian's deeds thereunder be declared void, and demanded an accounting at the hand of the guardian of rents and profits, the gist of the grounds for such relief is alleged to be the fraud of the guardian. This suit was brought in the United States Circuit Court, which sustained demurrer to the bill and dismissed the suit. In the brief of counsel for appellee (page 92, 129 U. S.), counsel, while not denying "the right of courts of general jurisdiction to set aside their own judgments and decrees on bills of review, for errors apparent on the record, or original bills in the nature of bills of review, for fraud in obtaining the judgments or decrees, where such bills are part of the recognized practice of courts", specifically presented and urged that "the Circuit Court of the United States has no power to grant the specific prayer of the bill, and set aside and

vacate the orders of the probate court of Defiance County, and declare the same void and of no effect". With reference to this point the Supreme Court say (page 99, 129 U. S., and page 240, 9 Sup. Ct.):

> "While there are general expressions in some cases apparently asserting a contrary doctrine, the late decisions of this Court, show that the proper *Circuit Court of the United States may, without controlling or annulling the proceedings of State courts, give such relief, in a case like the one before us, as is consistent with the principles of equity.*"

In that case there was diversity of citizenship, while in the case at bar Federal jurisdiction was asserted by reason of the Federal question. Also in that case the fraud was that of the guardian, while in the case at bar the averment is that the corruption of the court was the *causa causans* of the judgment assailed.

In that case, Justice Harlan further said:

> "This whole subject was fully considered in *Johnson* v. *Waters*, 111 U. S. 640, 667. That was an original suit in the Circuit Court of the United States for the District of Louisiana. It was brought by a citizen of Kentucky against citizens of Louisiana. Its main object was to set aside as fraudulent and void certain sales made by a testamentary executor under the orders of a Probate Court in the latter State. It was contended that the plaintiff was concluded by the proceedings in the Probate Court, which was alleged to have exclusive jurisdiction of the subject matter, and that its decision was conclusive against the world, especially against the plaintiff, a party to the proceedings. This court, while conceding that the administration of the estate there in question properly belonged to the Probate Court, and that, in a general sense, the decisions of that court were conclusive and binding, especially upon parties, said: 'But this is not universally true. The most solemn transactions and judgments may, at the instance of the

parties, be set aside or rendered inoperative for fraud. The fact of being a party does not estop a person from obtaining in a court of equity relief against fraud. It is generally parties that are the victims of fraud. The Court of Chancery is always open to hear complaints against it, whether committed *in pais* or in or by means of judicial proceedings. In such cases the court does not act as a court of review, nor does it inquire into any irregularities or errors of proceeding in another court; but it will scrutinize the conduct of the parties, and if it finds that they have been guilty of fraud in obtaining a judgment or decree, it will deprive them of the benefit of it, and of any inequitable advantage which they have derived under it'—citing Story's Eq. Jur. pp. 1570-1573; Kerr on Fraud and Mistake, 352-353; *Gaines* v. *Fuentes*, 92 U. S. 10; and *Barrow* v. *Hunton*, 99 U. S. 80.

"So, in *Reigal* v. *Wood*, 1 Johns. Ch. 402, 406: "Relief is to be obtained not only against writings, deeds, and the most solemn assurances, but against judgments and decrees, if obtained by fraud and imposition.' To the same effect in *Bowen* v. *Evans*, 2 H.L. Cas. 257, 281: 'If a case of fraud be established equity will set aside all transactions founded upon it, by whatever machinery they may have been effected, and notwithstanding any contrivances by which it may have been attempted to protect them. It is immaterial, therefore, whether such machinery and contrivances consisted of a decree of equity, and a purchase under it, or of a judgment at law, or of other transactions between the actors in the fraud.' See also *Colclough* v. *Bolger*, 4 Dow, 54, 56; *Barnesly* v. *Powel*, 1 Ves. Sen. 120, 284, 289; *Richmond* v. *Tayleur*, 1 P. Wms. 734, 736; *Niles* v. *Anderson*, 5 How. (Miss.) 365, 386.

"These principles control the present case, which, although involving rights arising under judicial proceedings in another jurisdiction, is an original, independent suit for equitable relief between the parties; such relief being grounded upon a new state of facts, disclosing not only imposition upon a court of justice

> in procuring from it authority to sell an infant's lands when there was no necessity therefor, but actual fraud in the exercise, from time to time, of the authority so obtained. As this case is within the equity jurisdiction of the Circuit Court, as defined by the Constitution and laws of the United States, that court may, by its decree, lay hold of the parties, and compel them to do what according to the principles of equity they ought to do, thereby securing and establishing the rights of which the plaintiff is alleged to have been deprived by fraud and collusion."

Mr. Circuit Judge Taft, afterwards Chief Justice of this Court, in writing the opinion in *Rhino* v. *Emery,* 72 Fed. 382, 386, said:

> "More than this, the validity of the probate proceedings is attacked for fraud, and the jurisdiction of a Federal Court of Equity to compel restoration of lands or proceeds fraudulently acquired by such proceedings is clear. Arrowsmith *v.* Gleason, 129 U. S. 87, 9 Sup. Ct. 237. A Federal Court of Equity where other necessary jurisdictional facts are present, has the right, without directly setting aside the proceedings in the State Court in which the sale is made, to lay its hands upon the guilty parties committing the fraud, and to hold them as trustees, for the defrauded one, to account for the proceeds of the action conceived and carried on in fraud."

We submit that the doctrine we contend for could not be more clearly and fully and absolutely set forth and stated, and, further, that the distinctions are so clear, and the reasonings so sound and in keeping with the efficient, intelligent and proper administration of the principles of equity as to meet with instant approval.

In fact, since the decision of this Court in *Johnson* v. *Waters,* 111 U. S. 640, no court, other than said Circuit Court of Appeals in the instant case, has held that equitable

relief could not be granted from a State Court judgment tainted with fraud.

Bear in mind that the holding of the Circuit Court of Appeals that relief could not be granted appellants without setting aside the State Court judgments was based solely on the authority of the *Rooker* case; but nothing in that case is contrary to the principles for which we contend, nor denies their application to the present case. There was no claim in that case that appellants did not have a full "hearing" (as that term is understood in relation to due process in judicial proceedings), or that the judgment assailed was concocted by the fraud of the court or judge, hence that case has not the features which determines this.

Moreover, the admitted chicanery of said State judges, even if such question had been raised in the State Court, could have not been tried by them. The maxim, *Judex non potest esse testis in propria causa* (A Judge cannot be a witness in his own case), is the answer.

So, the conclusion follows that such question could not have been raised in a petition to this Court for a writ of *certiorari* to the State Court, and that unless relief could be given by the United States District Court the petitioners are at the mercy of a corrupt court.

This suit unquestionably is an original, independent proceeding, and, therefore, within the class of cases of which the United States District Court may take jurisdiction.

Conclusion.

Unquestionably, the authorities of the State, charged with applying the laws of the State, and thus representing the State, have, with an "evil eye and an unequal hand" administered their own arbitrary, capricious and unjust fiat—not equal justice, but oppression and confiscation; denying to petitioners not merely due process of law, but the equal

protection of the laws, secured to the petitioners as well as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States.

So, we most respectfully submit:

First, that the court below has *Federal* jurisdiction because it is admitted upon the record that under the Constitution and laws of Texas the judgment of the Supreme Court must be concurred in by at least two of the Judges thereof, and that the pretended judgment of the Supreme Court of Texas was not the act of the Supreme Court but was the sole act of one of the Judges thereof done with the intent to defraud petitioners;

Second, that the court below has equitable jurisdiction because it is admitted upon the record that the State Court judgment was procured by corrupting the state appellate judges, and that such fraud was the *causa causans* of the judgment;

Third, that said District Court could, under the averments of the bill, if proved to be true, lay hold of the respondents, and compel them to do what according to the principles of equity they ought to do, without setting aside the State judgments.

So, for all the reasons assigned the writ should be granted.

Respectfully submitted,

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